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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... IOWA

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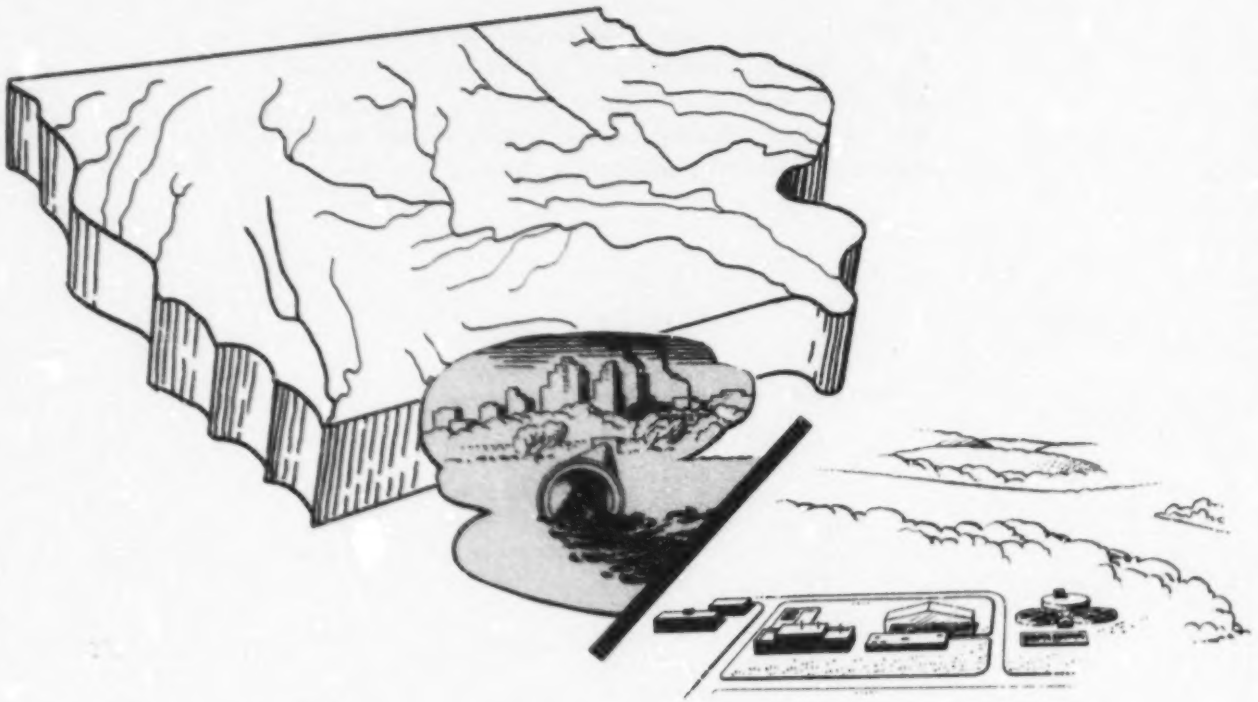

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

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DIGEST OF IOWA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

In Iowa the State Department of Health is the agency which has the primary function of controlling water pollution. The Department is authorized to make inspections of the public water supplies, sewerage systems, sewage treatment plants, and garbage and refuse disposal plants throughout the State, and direct the method of installation and operation of the same (Sec. 135.11(7)). [1/] The State Board of Health[2/] acts in an advisory capacity to the State Department of Health (Sec. 136.3).

Pollution is defined as "such contamination, or other alteration of the physical, chemical, or biological properties, of such waters of the State, or such discharge of such liquid, gaseous or solid substances into such waters of the State as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life" (1956 Cum. Supp., sec. 135.18).

II. ADMINISTRATIVE ORGANIZATION

State Department of Health

1. Organization

The Department is under the supervision of the Commissioner of Public Health, who is appointed by the Governor for a four year term, and must be a physician specially trained in public hygiene and sanitation (Sec. 135.2). The Commissioner employs such assistants and employees as may be authorized by law (Sec. 135.6).

1/ Citations in this digest refer to the Iowa Code Annotated and the 1956 Cumulative Supplement thereto, unless otherwise noted.

2/ Consists of the Commissioner of Public Health, the members of the Executive Council and 5 health officers appointed by the Governor (Sec. 136.1).

2. Powers and duties

a) General authority

The Department exercises general supervision over the public health, hygiene and sanitation in the State (Sec. 135.11).

b) Issuance of permits and approval of plans and specifications

Plans and specifications must be submitted to and a written permit secured from the Department for (1) the construction, installation or modification of any disposal system or part thereof, (2) the construction of any industrial or commercial establishment or any modification thereof, the operation of which will cause pollution of the waters of the State, or (3) the construction or use of any new outlet for the discharge of any wastes directly into the waters of the State. No permit is required for a new disposal system or extension thereof that receives domestic or sanitary sewage from a building housing 15 persons or less (1956 Cum. Supp., sec. 135.26).

c) Enforcement

The Department either upon its own initiative or upon a complaint filed with it that there is pollution in the waters of the State, makes an investigation, and if it finds such pollution exists, it issues an order for a hearing, fixing the time and place, which is to be not less than ten days thereafter. The hearing is public and is conducted in the same manner as a court hearing, and every alleged offender must be given the right to appear by counsel, present testimony and examine witnesses (1956 Cum. Supp., sec. 135.19).

Each alleged offender must be served with a notice of the time and place of the hearing at least ten days before the hearing. If, upon the hearing, the Department finds that an offender is guilty of the charges, it orders such person to desist from the practice found to be the

cause of the pollution, taking into account the use to which the water is being, or may be, put, or it may order a change in the method of passing waste materials into the water so that it will be rendered harmless. Such an order cannot be issued without the written approval of a majority of the members of the Iowa Natural Resources Council. 3/ If a change in practice is ordered, a reasonable time must be granted the offender in which to put to use the method ordered, unless such practice is rendering waters dangerous to the public health. The Department must keep a complete record of the proceedings which must be open to public inspection (1956 Cum. Supp., sec. 135.20).

The aggrieved party may appeal such order to the District Court of the County in which the alleged offense was committed. Such appeal is perfected by serving a written notice on the Commissioner of Public Health within thirty days of the entry of the order. The hearing on appeal is tried de novo as a suit in equity. The court may receive additional testimony and may affirm, modify, or reverse the order. The setting aside of the order of the Department, does not preclude it from again instituting proceedings against the same offender when in its opinion the public health is endangered (1956 Cum. Supp., sec. 135.21). When an appeal is filed with the Commissioner, he is required, within thirty days, to make, certify and file in the office of the Clerk of the Court a complete transcript of all documents and papers relating to the case (1956 Cum. Supp., sec. 135.22).

Anyone causing pollution of the waters of the State, or placing any wastes in a location where they will probably cause pollution of such waters may be enjoined from continuing such action. The Attorney

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3/ Consists of 7 members, selected from the State at large, who are appointed by the Governor for overlapping terms of 6 years (1956 Cum. Supp., sec. 455A.4).

General, on the request of the Department, brings an action for an injunction against the violator. In such action any previous finding of the Department after hearing or due notice is prima facie evidence of the facts found therein (1956 Cum. Supp., sec. 135.24).

The failure of anyone to obey an order issued by the Department after hearing regarding pollution of the waters constitutes prima facie evidence of contempt, and the Department may certify to the District Court such fact. The District Court upon such certification hears the matter, and if the order is found to be reasonable and lawful it may punish for contempt to the same extent as though such failure were in connection with an order made by the Court which is made punishable by contempt. The finding of contempt carries a penalty of a fine, which is in addition to any other penalty regarding nuisances and other statutes relating to the pollution of streams or other bodies of water (1956 Cum. Supp., sec.135.25).

No sewage or any other waste whether treated or untreated is permitted to be discharged directly into any State-owned natural or artificial lake. This prohibition does not apply to the discharge of adequately treated sewage or wastes into a stream tributary to a lake upon the written permission of the Department and the State Conservation Commission [4/] (1956 Cum. Supp., sec. 135.29).

d) Conduct of studies, investigations and research

The Department upon its own initiative or upon petition filed with it is authorized to make surveys of any body of water in the State for the purpose of determining ways and means of eliminating pollution therein (1956 Cum. Supp., sec. 135.18).

4/ Consists of 7 members appointed by the Governor, not more than 4 of whom are to belong to the same political party (Secs. 107.1, 107.2).

e) Cooperation with other public and private agencies

The Department is authorized to accept financial aid from the Federal Government for the purpose of assisting it in carrying on public health work in the State (Sec. 135.39).

f) Administrative powers

The Department is authorized to hold hearings and issue orders in connection with pollution of the waters of the State (1956 Cum. Supp., secs. 135.19, 135.20). The Department is further authorized to adopt and enforce rules and regulations governing the method and manner under which plans and specifications or other data is to be submitted for waste disposal systems or for changes to such systems. It is further empowered to adopt and enforce rules and regulations consistent with the provisions of the Act restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the waters of the State (1956 Cum. Supp., sec. 135.28).

III. OTHER STATE AGENCIES HAVING WATER POLLUTION CONTROL FUNCTIONS

The Iowa Natural Resources Council is authorized to make surveys of the water resources of the State and of the problems of agriculture, industry, conservation, health, stream pollution and allied matters as they relate to flood control and water resources, and to make and formulate plans and recommendations for the further development, protection and preservation of the water resources of the State (1956 Cum. Supp., sec. 455A.18).

A permit must be obtained from the Iowa Natural Resources Council for, among other things, the diversion of water or any material from the surface directly into any underground watercourse or basin. However, no such permit is required if such diversion was existing on the effective date of the Act (5/1/57) if such diversion does not create waste or pollution (Laws of Iowa, 1957, Ch. 229, sec. 15(3)).

A permit for the construction of a dam must be obtained from the Iowa Natural Resources Council. If the use to which the water will be put will cause pollution, a permit will not be issued. Before a permit will be issued a certificate of approval from the Department of Public Health must be secured (1956 Cum. Supp., sec. 469.1-469.10; sec. 469.1-469.10).

Well drillers drilling for oil or gas are required to use proper precautions for the protection of all contiguous underground fresh water strata from pollution or contamination, and must file within sixty days after completion of the well a report with the State Geologist showing a complete record of the precautions taken (Sec. 84.1).

IV. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

(a) To throw any dead animal, night soil, or garbage into any river, well, spring, cistern, reservoir, stream, or pond, or in or upon any land adjoining, which is subject to overflow. Violation carries a fine or imprisonment (Sec. 732.3).

(b) To willfully poison any spring, well, cistern, or reservoir of water. Violation carries a fine and imprisonment (Sec. 690.9).

(c) To use any dynamite or other explosives or poisonous or stupefying substances, lime or ashes in taking fish (1956 Cum. Supp., sec. 109.76).

It is a nuisance to corrupt or render unwholesome or impure the water of any river, stream or pond (Sec. 657.2(4)). Anyone causing a public or common nuisance, where no other punishment is provided, is subject to a fine or imprisonment, and the Court may order the nuisance abated (Sec. 657.3).